

1           did that use your Appleton Police Department  
2           computer?  
3     A     Yes.  
4     Q     Okay. And that computer is backed up by a server,  
5           correct?  
6     A     I'm assuming it is.  
7     Q     When you spoke with Ryan Thao the second time in  
8           April, he discussed great reluctance to become  
9           involved even the second time, correct?  
10    A     Yes.  
11    Q     And over half of your interview was spent persuading  
12           him to come forward; is that fair to say?  
13    A     I would say maybe 30 minutes, 45 minutes talking to  
14           him, yes.  
15    Q     And the tape is an hour-and-a-half long, isn't it?  
16    A     I didn't check it yet, but I assume that you're  
17           correct.  
18    Q     And the first time that you interviewed him, how did  
19           he identify Chong Lee to you?  
20    A     He indicated that he did not know Chong, obviously,  
21           and that he did not know a lot of the people, but he  
22           provided description of the person that ended up  
23           shooting the person.  
24    Q     Did you show him photographs during that first  
25           interview?

1 A No, I did not.

2 Q Did you use Chong Lee's name during that first  
3 interview with him?

4 A No, I did not.

5 Q You never used his name?

6 A I did not.

7 Q Did you -- what description did he give you of the  
8 person who was the shooter in the first interview?

9 A Because at that time we really didn't know who  
10 obviously did the shooting in terms of there were a  
11 lot of people that were interviewed, or at least I  
12 wasn't as I got into the investigation several days  
13 after the shooting, I simply went there based on the  
14 identification that was made on that white board to  
15 talk to him as to what he observed or what happened,  
16 so I was simply getting the information from him as  
17 to his observations and what happened whether before  
18 or after the shooting.

19 Q What description did he give you of the shooter at  
20 that time?

21 A He indicated that it was a subject that was coming  
22 from the bar into the foyer area with a couple other  
23 peoples.

24 Q What clothing description did he give you?

25 A I don't recall specific about clothing. He described

1           that there was three people coming from the bar and  
2           then a person, and then he see the smoke and he  
3           provided that it was that person that did the  
4           shooting.

5       Q     Did he say the person had on what looked like a white  
6           jacket with dark sleeves?

7       A     I don't recall that.

8       Q     You didn't show him any pictures.

9       A     I did not show him any picture.

10      Q     And Sergeant Meyer didn't show him any pictures at  
11           the time.

12      A     No photo was shown to.

13      Q     At that time actually Paul Lee was the suspect in the  
14           case, correct?

15      A     At that time, again, I got involved in the case two  
16           or three days later. I did not know the initial  
17           information that other officers had received. I went  
18           into the interview with Ryan with an open mind just  
19           to get information, so I really didn't know who did  
20           the shooting or were potential suspect at that  
21           time.

22      Q     Did this interview with Ryan occur before or after  
23           you were involved in interviewing Paul Lee?

24      A     Before.

25                   ATTORNEY VISHNY: I don't have any further

1 questions right now.

2 THE COURT: Attorney Schneider?

3 ATTORNEY SCHNEIDER: Nothing further,  
4 Judge.

5 THE COURT: Sergeant, you may be seated.

6 THE WITNESS: Thank you.

7 ATTORNEY VISHNY: I'm calling Lieutenant  
8 Gostisha. He's not sequestered, but I didn't  
9 anticipate calling him, because I was completely  
10 shocked by the testimony.

11 (Oath administered to witness.)

12 THE WITNESS: I do.

13 THE CLERK: Please state your full name,  
14 spelling your last name for the record please.

15 THE WITNESS: Michael D. Gostisha,  
16 G-O-S-T-I-S-H-A.

17 EXAMINATION

18 BY ATTORNEY VISHNY:

19 Q Lieutenant Gostisha, were you involved in the  
20 decision to destroy these recordings of the  
21 interviews of Ryan Thao, Mikey Thao and Watou Lee?

22 A Yes.

23 Q Who made the ultimate decision, did you make it as  
24 the most commanding officer?

25 A Yes.

1 Q All right. And when did you discuss that with Miss  
2 Schneider?

3 A I don't know.

4 Q But you did do so, correct?

5 A I'm not even sure of that, if I would have had any  
6 direct conversations with her concerning that.

7 Q Okay. But you're aware of somebody had informed the  
8 prosecutor's office before this decision was made?

9 A Again, I am not aware of that necessarily.

10 Q But you're familiar with the computer system at the  
11 Appleton Police Department, correct?

12 A Correct.

13 Q So anything that is put on a person's computer is  
14 backed up to a server automatically, isn't it?

15 A It should be.

16 Q And so, therefore, even if something has been  
17 destroyed, a computer technology person can go to a  
18 server and recover data; isn't that correct?

19 A I believe so.

20 ATTORNEY VISHNY: Okay. Nothing further.

21 THE COURT: Attorney Schneider.

22 EXAMINATION

23 BY ATTORNEY SCHNEIDER:

24 Q If you are aware, when discussions were held that  
25 there were parties who didn't want to be identified,

1           were their names discussed with the prosecutors?

2     A     That I'm not aware of. I didn't have any with them  
3           that I can recall. And the discussions I had were  
4           all with the group of officers.

5     Q     And that would include discussions about what to do  
6           with the recordings?

7     A     Correct.

8           ATTORNEY SCHNEIDER: Nothing further.

9           THE COURT: Attorney Vishny?

10          ATTORNEY VISHNY: Is Sergeant Meyer here?

11          ATTORNEY SCHNEIDER: No.

12          THE WITNESS: He's retired.

13          ATTORNEY VISHNY: He's retired? Okay.

14          I'll call Sergeant Rabas then. I'll go get him.

15          THE COURT: Thank you.

16          (Oath administered to witness.)

17          THE WITNESS: I do.

18          THE CLERK: Please state your full name,  
19          spelling your last name for the record please.

20          THE WITNESS: Neal Rabas, R-A-B-A-S.

21                                 EXAMINATION

22     BY ATTORNEY VISHNY:

23     Q     Sergeant Rabas, what's the name of the individual who  
24           just walked in the courtroom who was talking to you  
25           in the hallway?

Lied told  
him about the  
questioning

1 A Investigator Paul Black from the District Attorney's  
2 office.  
3 Q And what did Investigator Black tell you about the  
4 testimony that was going on in the courtroom?  
5 A We didn't -- nothing. We didn't talk about that.  
6 Q Nothing. Okay.  
7 Now, proceeding to question you now about the  
8 interviews of Ryan Thao, Mikey Thao and Watou Lee,  
9 I'm going to ask you about all three of those. Okay?  
10 A Okay.  
11 Q Okay. Let's take them one at a time just so the  
12 record is clear.  
13 On April 17th, 2015 you and Sergeant Chue Thao  
14 interviewed Ryan Thao, correct?  
15 A Yes.  
16 Q And when that interview was conducted, what did you  
17 know about what Ryan Thao had stated in an earlier  
18 interview?  
19 A I knew that he was in the area where the shooting  
20 took place at Luna and that he had witnessed part of  
21 what had taken place --  
22 Q Okay.  
23 A -- prior and right after the shooting.  
24 Q Did you know the details of what he had said he had  
25 witnessed?

1     A     No, I did not know all the details. I knew that he  
2           was there with friends and that he may have witnessed  
3           part of what had taken place, but I didn't know the  
4           details of specifically what he had witnessed.

5     Q     Had you listened to the recording of his prior  
6           interview?

7     A     No.

8     Q     Were there any written notes or reports concerning  
9           that interview that you were aware of?

10    A     None that I've ever seen.

11    Q     Were you aware of whether or not photographs had been  
12           previously showed to him to see if he could identify  
13           any of the people who were at Luna?

14    A     No, I don't.

15    Q     Okay. Now, did you participate in the decision at  
16           all to destroy the recording of his previous  
17           interview?

18    A     I think as we were investigating this incident  
19           information had come forward that there were  
20           witnesses that had asked not to be identified as a  
21           result of -- for fear of their own safety, as to what  
22           should be done with the recordings of their  
23           interviews and any of our notes. I think as a group  
24           we decided that that's something, because of the  
25           request for confidentiality based upon their safety,



1           that we would not retain any information associated  
2           with those interviews.

3       Q     Okay. Now the District Attorney's office had been  
4           made aware of all three of these individuals prior to  
5           the decision to destroy the recordings, correct?

6       A     I don't recall the timing of all of that taking  
7           place.

8       Q     And the District Attorney's office was consulted  
9           prior to destroying these recordings, correct?

10      A     I don't recall the timing of what had taken place.

11      Q     But you do know that they were consulted about the  
12           destruction of the recordings, correct?

13      A     I don't know if they were advised that's what took  
14           place after the fact or if they were questioned about  
15           it prior to it occurring.

16      Q     Well, let me just say this. If Sergeant Thao says  
17           that they were advised of it before it occurring,  
18           would you rely on that?

19      A     Sergeant Thao was the person who interviewed the  
20           three individuals that you referred earlier, so he  
21           had the most current or up-to-date information on  
22           that. My -- my information would have been  
23           secondhand.

24      Q     Okay. When you talked to all of these individuals  
25           this last time around, were they shown any

1           photographs of any suspects or, in particular, Chong  
2           Lee?

3       A     No, I don't believe we showed them a photograph of  
4           Chong Lee.

5       Q     Okay.

6       A     It -- I should say, there was photographs shown from  
7           the video from Luna of people exiting Luna, and the  
8           photographs -- I don't recall -- obviously Chong Lee  
9           is in some of those photographs, and I don't recall  
10          specifically if the photographs that we included in  
11          showing him -- showing the individuals how they were  
12          identified through those photographs included Chong  
13          Lee.

14      Q     So you're -- I'm a little bit confused now. Were  
15          those photographs of people exiting Luna shown to  
16          these witnesses when they were reinterviewed in April  
17          or do you believe they were shown to the witnesses  
18          when they were originally interviewed back in  
19          December of 2013?

20      A     In April we showed them photographs from the video  
21          from Luna. I don't -- I don't recall the earlier  
22          because I was not part of that, or I should say I  
23          don't know if there was any photographs shown to the  
24          witnesses prior to that in the prior interview  
25          because I was not part of that.

1 Q In each one of these interviews, you began by telling  
2 these witnesses that their identity had been  
3 inadvertently turned over to the defense because they  
4 had appeared on the white board; in other words,  
5 their photos had been provided, correct?  
6 A Correct.  
7 Q In fact, the identities of all these people had been  
8 provided in written discovery because there was a  
9 traffic stop that had occurred that night outside of  
10 Luna and the identities of Mikey Thao and Kevin Watou  
11 Lee had been provided in discovery, correct?  
12 A Correct.  
13 Q And is Ryan Thao another name for Jack Thao or is  
14 that somebody different?  
15 A I believe they're two different individuals.  
16 Q So Ryan Thao had not been in the car with Mikey Thao  
17 and Watou Lee that was stopped?  
18 A Correct.  
19 Q And after telling them this, another thing you talked  
20 with each one of these individuals about was the fact  
21 that they might be interviewed by defense counsel at  
22 some point, correct?  
23 A Correct.  
24 Q And what you told them was it was up to them whether  
25 or not they wanted to talk to an investigator for the

1 defense, correct?

2 A Correct.

3 Q But that they didn't have to talk to an investigator  
4 to the defense, right?

5 A Correct.

6 Q And what you specifically said was that they could  
7 tell the investigator for the defense that they had  
8 already given the statement to the police and didn't  
9 have to interview -- and did not have to consent to  
10 be interviewed by defense investigator, correct?

11 A I'm not sure if I worded it in that same fashion.

12 Q Would you like me to play the tape to refresh your  
13 recollection? I'll have to do that on another  
14 occasion.

15 A I don't recall exactly. I don't recall saying it in  
16 the fashion that you presented it.

17 Q Well, what fashion do you recall saying it in?

18 A I don't know word-for-word, but something to the fact  
19 of it's possible that the defense counsel or their  
20 investigator may want to talk to you, and, sort of,  
21 would you now be willing to give a statement --  
22 because you were inadvertently identified, would you  
23 be willing to give us a statement today in reference  
24 to what you saw or witnessed. That way, if the  
25 defense would like to question you, then you've

1 already given a statement to the police.

2 Q But that was at the outset of you talking to each one  
3 of these three individuals, correct?

4 A In April?

5 Q Yes.

6 A Correct.

7 Q But at the end of the interviews you repeated that  
8 they didn't have to talk to a defense investigator,  
9 didn't you?

10 A Correct.

11 Q And that in fact they could tell the investigate --  
12 defense investigator that they had talked to the  
13 police and that the defense investigator could rely  
14 on that statement, right?

15 A Correct.

16 ATTORNEY VISHNY: Nothing further.

17 THE COURT: Miss Schneider.

18 EXAMINATION

19 BY ATTORNEY SCHNEIDER:

20 Q Do you remember at any point, I'm going to say, in  
21 December, immediately after, or the next few months  
22 after this occurring if the specific names of these  
23 three were discussed with prosecutors as to these are  
24 the three who don't want to be named?

25 A No, I don't recall -- well, I should say I don't

1 believe that we provided any names. I think we just  
2 threw out or mentioned that there was witnesses that  
3 had chosen not to be identified or requested not to  
4 be identified for fear of their safety.

5 Q And prior to going to talk to them in April of 2015  
6 do you remember any discussions with prosecutors to  
7 say, okay, these are the three people and we're going  
8 to go talk to them or giving their specific names or  
9 just saying we're going to go talk to some additional  
10 witnesses?

11 A Again, I believe it was just a general that we were  
12 going to be speaking or contacting additional  
13 witnesses in reference to that. In particular, I --  
14 I knew there were three individuals that were  
15 identified inadvertently through the posting on the  
16 white board that had not been named in the report  
17 associated with the homicide.

18 Q And when you were looking at that or prepping and  
19 looked at the white board and saw those three names,  
20 what thoughts did you have at that point?

21 A My thought was that I had inadvertently -- I  
22 indirectly had inadvertently released their names to  
23 the defense counsel and the defendant after they had  
24 requested not to be identified and associated with  
25 the homicide case, and not only were their pictures

1 but their full names were identified as a process of  
2 this investigation. And as I was prepping for it, I  
3 realized through the submission of those photos that  
4 the defense counsel now had that. And two things, I  
5 wanted to notify them that the defense is aware of  
6 who they are and that they may be interviewed, and  
7 then the second -- I guess I wanted to apologize that  
8 I had inadvertently done that as well as now to see  
9 if over a year-and-a-half later if they would be  
10 willing to be formally identified as a witness.

11 Q And that did -- their identification is because when  
12 the white board was up with several photos, a photo  
13 of the entire board was taken or captured, correct?

14 A Correct.

15 Q Do you ever recall any specific conversations with  
16 myself or other prosecutors in my office about any  
17 original reports or recordings or what was going to  
18 be done with them?

19 A No, I don't.

20 Q Do you recall any direction given by myself or other  
21 prosecutors as to what if anything should happen to  
22 any information obtained from these people when they  
23 ask to be named or remain confidential?

24 A No, I don't.

25 Q We've had several discussions about different

1 components of this case, correct?

2 A Yes.

3 Q But you don't recall any discussions with myself or  
4 other prosecutors related to saying, yes, go ahead  
5 and get rid of those prior recordings.

6 A No. I think that was a decision that was made with  
7 the investigators that were working on the case as to  
8 what do we do with this information, and we related  
9 to the Monfils Law, and that we believe that if there  
10 were any of those recordings, photographs or any  
11 submissions like that, we knew through discovery the  
12 defense would be able to obtain that, so I think as  
13 an investigative team we just decided that nothing  
14 would be retained.

15 ATTORNEY SCHNEIDER: I have nothing else,  
16 Judge, at this time.

17 THE COURT: Attorney Vishny.

18 ATTORNEY VISHNY: Yeah. I have a few more  
19 questions.

20 EXAMINATION

21 BY ATTORNEY VISHNY:

22 Q First of all, outside of these three witnesses, Mr.  
23 Thao, Mr. Thao and Mr. Lee, are there any other  
24 witnesses who exist in this case who do not want to  
25 be identified or simply who were interviewed by the



1 police that have not been disclosed to the State or  
2 the defense?

3 A Yes.

4 Q How many?

5 A Well, there was about 150 people at the bar that we  
6 interviewed. Some of those identities -- I believe  
7 most of those identities you have, but the full  
8 interviews as far as what was discussed during those  
9 interviews was not retained, whether it was recorded  
10 or notes taken from that or a report completed on  
11 that. In addition to that, I know of two other  
12 individuals -- I recall two other individuals who I  
13 was part of -- I interviewed that had requested not  
14 to be identified under the same concerns about their  
15 own personal safety in reference to this case.

16 Q Okay. What are the name of those individuals?

17 A I don't recall or don't remember right now.

18 Q So if we took a ten-minute break and you ran back to  
19 your office you could retrieve that, correct?

20 A I don't know if I have anything from those  
21 interviews.

22 Q Well did you reinterview those people in April of  
23 2015 as well?

24 A No, I did not.

25 Q Why not?

1 A Because their photos and identities weren't turned  
2 over to you.

3 Q And those people did not tell you that Chong Lee did  
4 the shooting, did they?

5 A I think there is a double negative in there. Could  
6 you repeat the question?

7 Q Okay. Let's take the first individual, call them  
8 individual number one. Regarding individual number  
9 one, did that person identify Chong Lee as the  
10 shooter?

11 A No.

12 Q Did they identify another individual as the  
13 shooter?

14 A No.

15 Q Did they witness the shooting?

16 A No.

17 Q Are you a hundred percent positive of that?

18 A No. I just base that -- base that response upon what  
19 they told me.

20 Q Well what did they tell you, individual number one?

21 A Again, without my notes, what I believe is they  
22 were -- they had just left or just outside the doors  
23 of Luna at the time of the shooting and then  
24 witnessed the individuals exiting the bar as well as  
25 the fight between the two women that occurred on

1 Division Street.

2 Q Okay. What about individual number two?

3 A The same information. They were together..

4 Q It was a man and a woman, wasn't it?

5 A No. It was two males.

6 Q Okay. And those two males were Hmong males?

7 A No. One was a white male and one was a Hmong male.

8 Q But they were both affiliated with the same group of

9 friends as Chong Lee, Joe Thor, Paul Lee, Phong Lee,

10 you know, other Hmong males who were at that bar?

11 A No, they were not, not with that group of friends.

12 Q They weren't.

13 A No.

14 Q Had they been hanging out with that particular group

15 of people earlier that evening?

16 A Not -- not that I recall.

17 Q Had they been hanging out with Tom Lee earlier that

18 evening?

19 A No.

20 Q All right. So aside from those two individuals are

21 there any other Hmong individuals who were

22 interviewed that the interview was not preserved?

23 A By me directly?

24 Q To your knowledge. No. You're the person who

25 actually kind of has been overall in charge of this

1 well, there was no information in that report that  
2 associated them as a direct witness to the -- what  
3 had taken place in the foyer.

4 Q And Mikey Thao's information regarding him being a  
5 potential gang member had also been turned over in a  
6 packet of discovery regarding prior law enforcement  
7 contacts, correct?

8 A Correct.

9 Q And you had worked on that as well?

10 A Part of that, yes.

11 Q And so that was another means by which that had been  
12 turned over prior to this interview you conducted in  
13 April, correct?

14 A Correct. But that name was again associated with the  
15 traffic stop in front of George Webb's, not  
16 necessarily -- which is a total -- how should I say  
17 it, it's a separate report, a separate incident  
18 number. Again, that report doesn't reflect any  
19 information that he had direct knowledge of what had  
20 taken place in the foyer at Luna.

21 Q Regarding the interviews of those three individuals,  
22 with the interview with Ryan Thao, there is a  
23 substantial portion of time was devoted to persuading  
24 him to come forward and be a witness in this case,  
25 correct?

1     A     Yes.

2     Q     So there was more to these reinterviews than to

3           simply inform people that they had been inadvertently

4           identified, correct?

5     A     Correct.

6     Q     And in fact about half of the time that was spent

7           with Ryan Thao was to try and persuade him that he

8           should come forward and be willing to be a witness.

9     A     Yes. We were trying to persuade him or, I guess at

10          this point, see if he would be willing to identify as

11          a witness in this incident since he did have some

12          information related to the shooting.

13    Q     And the same was done with Mr. Mikey Thao and Mr.

14          Watou Lee as well, but it didn't take that much time

15          because they fairly rapidly agreed to be identified.

16    A     Correct.

17                   ATTORNEY VISHNY: I don't have any

18                   questions right now.

19                   THE COURT: Miss Schneider, any follow-up?

20                   ATTORNEY SCHNEIDER: No.

21                   THE COURT: Okay. Attorney Vishny?

22                   ATTORNEY VISHNY: You're excused.

23                   THE COURT: Sorry?

24                   ATTORNEY VISHNY: I want to call Sergeant

25                   Meyer. I want to know how long it would take to get

1 him here, if we can get him here rapidly. And if  
2 not, which I can certainly appreciate that we not,  
3 I'd like to set another date as soon as possible.  
4 And I'm going to ask for a court order, since there  
5 are many law enforcement agents in this room, that  
6 none of them nor the prosecutor discuss any of the  
7 testimony which has occurred today that -- because,  
8 quite frankly, Judge, I was quite surprised by the  
9 testimony regarding the destruction of these  
10 recordings, and I want to ask him some further  
11 questions. It certainly appears that the evidence  
12 would show that the State was informed of that before  
13 it occurred since he was the lead investigator at  
14 that time.

15 If Miss Schneider wants to make representations  
16 to the court that the State was not informed, I'm  
17 going to take the unusual step of asking that she be  
18 sworn under oath and I be allowed to question her  
19 rather than just make representations to the court  
20 because she could potentially be a witness in this  
21 matter. So I would ask the court to decline to  
22 accept any argument from Miss Schneider unless it  
23 becomes part of the testimonial record in this  
24 matter. So that's the first order of business.

25 The second thing I'm going to be asking of the

1 court is I'm going to ask the court to order the IT  
2 department at the Appleton Police Department, they  
3 may have to hire an outside provider, but it's my  
4 belief that if these recordings were destroyed, that  
5 they are probably still on the server. And, you  
6 know, from what I know from the prosecution of child  
7 pornography cases, it appears that things never  
8 really leave a computer, and so it may be that this  
9 could be a lot of hooey about nothing if we can  
10 retrieve the original recordings of all of these  
11 witnesses. Because if we can't, the next motion I'm  
12 going to bring is to preclude them from testifying at  
13 the trial as to anything inculpatory because I have  
14 ample reason to believe that exculpatory material  
15 exists on these recordings. That would take me quite  
16 a while to do that. I would have to write a fairly  
17 substantial brief outlining how Sergeant Thao  
18 questions witnesses and contaminates witness  
19 interviews by suggesting who the perpetrator is, but  
20 I have seen it throughout this case on numerous  
21 interviews that this court has not reviewed, and it  
22 would be my belief that he would not have deviated  
23 from that very much in interviews of any other  
24 witnesses and that therefore that material would be  
25 exculpatory. Because I can never recover how to

1 cross-examine these witnesses.

2 So that's the plan that I am proposing to the  
3 court. I don't know how the court wants to proceed.

4 THE COURT: Let me ask the first question:  
5 Do we know, Attorney Schneider, whether Attorney  
6 Maier is -- Investigator Meyer is available, not  
7 available?

8 ATTORNEY SCHNEIDER: He's retired so what  
9 he's doing on any given day I have no idea. We -- I  
10 know we have access to cell numbers and home numbers  
11 so we can try to make a call to see if he's available  
12 yet today if that's the suggestion. I know Mr.  
13 Maier, Attorney Maier has been trying to check with  
14 some other people who know more about Appleton and  
15 their IT department, and I don't know that answer,  
16 but my guess, Appleton has got a very good IT  
17 department for the City that controls the police  
18 department agency. I just don't know, if Sergeant  
19 Thao saved it within his file folder on his computer,  
20 when the network backs everything up, does it back up  
21 only what you put on the server or does it back up  
22 everything on everyone's individual computer. I  
23 don't know that answer, but my guess is we can find  
24 that out or ask them.

25 THE COURT: Why don't we do this. Let's



1           see if we can get a hold of Investigator Meyer.  
2           We'll take a five- or ten-minute break.

3           ATTORNEY VISHNY: And would the court issue  
4           that order that he's under sequestration, therefore  
5           nobody may discuss with him the subject matter of  
6           what's occurred before here.

7           ATTORNEY SCHNEIDER: Just that it's on  
8           Chong Lee, we're in the middle of a motion hearing  
9           and trying to see if he can make it in yet today.

10          THE COURT: Correct.

11          ATTORNEY VISHNY: Thank you.

12          THE COURT: And then if he's available on a  
13          different day, we can cross the bridge of making that  
14          an ongoing order.

15          ATTORNEY SCHNEIDER: Yes.

16          ATTORNEY VISHNY: Okay.

17          (A brief recess was taken.)

18          THE COURT: It's my understanding that  
19          Investigator Meyer is not available today, correct?

20          ATTORNEY VISHNY: That's what I've been  
21          told.

22          THE COURT: Then in this case we will try  
23          to get a date as soon as possible.

24          ATTORNEY VISHNY: Yes.

25          Now the other thing that's happening is -- and

1 STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

2  
3 STATE OF WISCONSIN,

4 Plaintiff,

5 v.

Case No. 13-CF-1074

6 CHONG LENG LEE,

7 Defendant.

8  
9 MOTION HEARING

10 BEFORE: HONORABLE GREGORY B. GILL, JR.  
11 Circuit Court Judge, Branch IV  
12 Outagamie County Justice Center  
13 Appleton, WI 54911

14 DATE: September 29, 2015

15 APPEARANCES: CARRIE SCHNEIDER  
16 District Attorney  
17 Appearing on behalf of the State

18 ANDREW MAIER, ALEXANDER DUROS and PETER  
19 HAHN  
20 Assistant District Attorneys  
21 Appearing on behalf of the State

22 DEBORAH VISHNY and EVAN WEITZ  
23 Attorneys at Law  
24 Appearing on behalf of the Defendant

25 CHONG LENG LEE  
Defendant  
Appearing in person

26 Joan Biese  
27 Official Reporter, Branch IV  
28 Outagamie County

1 going to be an effort to obtain those recordings in  
2 hopes that some backup may be located on a server or  
3 something.

4 ATTORNEY SCHNEIDER: And I think we  
5 provided some updates between the May and the June  
6 hearings because we checked some locations, but I can  
7 tell you since June they've continued to look in  
8 different locations. Sergeant Meyer has since  
9 retired, and I think the court was aware of that  
10 because of scheduling with him last time. There's  
11 been a look there. Sergeant Thao even told me today  
12 that they sent his digital recorder at some point to  
13 some other place for it to be checked to see if  
14 anything was still on there that might have been  
15 deleted previously. So we've not found any of those  
16 original recordings, which is kind of what we --  
17 where we were last time. We gave an update to what  
18 we had checked, they were checking some additional,  
19 but I think at this point they've looked everywhere  
20 they can think of and looked on backups and in the  
21 computer and in the overall evidence BEAST system,  
22 and those they cannot locate.

23 THE COURT: So, okay, Attorney Vishny, any  
24 additional issues that you would like to have  
25 addressed today other than those outlined by Attorney

1 A Correct. I did testify to that they were not  
2 retained.

3 Q And the decision to not retain them, that wasn't a  
4 decision made by you alone.

5 A No, it was not.

6 Q And can you name all the people that you recall  
7 involved in that decision right now?

8 A It was a discussion in the unit in terms of the  
9 investigators that were working on the case, as they  
10 were aware that we have interview those party, and  
11 then I know one day Lieutenant Gostisha, former  
12 Lieutenant Gostisha walked into my office saying that  
13 we did not need to retain those recordings.

14 Q Okay. Were you aware that there were other  
15 recordings of two people named Jared Randall and  
16 Johnny Thao who had been interviewed and not turned  
17 over to the defense but the recordings were retained?  
18 Did you know anything about that?

19 A No, I was -- I was -- I was aware of the name Johnny  
20 Thao several months after the investigation, but I  
21 did not know where to interview him.

22 Q Now when you first interviewed Ryan Thao, the very  
23 first time, you didn't show him any pictures, did  
24 you?

25 A No, I did not show him any picture.

1 Q Do you remember him telling you that the shooter had  
2 on a white coat the first time you interviewed him?  
3 A Based on the description of his observation, he  
4 indicated that the clothing I believe.  
5 Q The coat was white, right? That's what he told  
6 you?  
7 A I don't recall exactly.  
8 Q So you can't recover that information now because you  
9 don't have the tape to refer to, correct?  
10 A He provided some descriptions of the person, but I --  
11 I can't recall exactly what.  
12 Q Okay. So you don't know one way or another if he  
13 told you the coat was white at that time, right?  
14 A Yeah. I don't recall from that first interview.  
15 Q Okay. And at that first interview did you  
16 specifically ask him whether or not he knew who Chong  
17 Lee was or not?  
18 A No. Again, at that time we did not know -- at least  
19 I did not know any particular specific suspect in the  
20 investigation. I was pulled into the case three days  
21 or two days later, and I simply went in there based  
22 on information on those subjects to simply listen to  
23 them, get their observation of what they saw, and  
24 gather the informations.  
25 Q Okay. And so no photos or showing -- there is no

1 with Paul Lee at Norka?

2 A Yes.

3 Q And the name Mikey Thao came up there as well?

4 A I believe so. It was a long interview and we

5 discussed various people in terms of what they were

6 doing in the foyer, and I believe that that name may

7 have come up at that time.

8 Q Okay. When you interviewed Paul Lee that day on

9 December 11th, you had actually already interviewed

10 Mikey Thao for the first time, correct?

11 A No, I have not.

12 Q You hadn't interviewed him on December 11th?

13 A Not at -- not at Norka when we interview Paul Lee.

14 Q No. I understand that. But had you interviewed

15 Mikey Thao earlier that day? Was it that same day

16 that you interviewed Mikey Thao?

17 A No, it was after we interview Paul Lee at Norka that

18 I made contact with him that I interview him on that

19 night.

20 Q Mikey Thao?

21 A Mikey Thao.

22 Q Okay. So it came afterwards?

23 A After Norka.

24 Q What time that night did you interview Mikey Thao, if

25 you recall?

1 A It was after Paul Lee was taken to the Appleton  
2 Police Department for additional question by other  
3 officer. I remain at Norka to interview Michael  
4 Xiong, which is Chong Lee, the defendant's,  
5 brother-in-law. And then after that then I interview  
6 -- I believe I made contact with Mikey and then I  
7 interview him.

8 Q Okay. Where was that interview conducted?

9 A It was in my squad. I believe I met him somewhere.

10 Q And you didn't show him any photographs either,  
11 correct?

12 A No, I did not.

13 Q And at that time did he tell you that he thought  
14 Chong Lee was still in jail?

15 A Yes.

16 Q Okay. And he never identified Chong Lee as somebody  
17 who did the shooting, right?

18 A Not by name, he just provide descriptions of people  
19 coming through.

20 Q Okay. And he said that the shooter had on a white  
21 jacket, correct?

22 A I guess -- I mean, I --

23 Q At that time.

24 A If he did mention some kind of clothing, again, I --  
25 I don't recall exactly the type of color he used. If

1           he say it was white, then I'm assuming it's white.

2       Q     In your re -- when you reinterviewed him in April of  
3           2015 he then told you the shooter had on a white  
4           jacket, correct?

5       A     Again, I have not had a chance to look at that  
6           report.

7       Q     Would it help you if I showed you your report to  
8           refresh your recollection?

9       A     Yes.

10      Q     The report is actually written by Sergeant Rabas,  
11           correct?

12      A     Correct.

13      Q     Okay.

14                   ATTORNEY VISHNY: Sorry, Judge. I thought  
15           I was a little bit more organized than that.

16      Q     (BY ATTORNEY VISHNY) Okay. I'm showing you a copy  
17           of Sergeant Rabas's summary of that interview  
18           regarding Mikey Thao, and just ask you if that helps  
19           refresh your memory as to what Mikey Thao said in  
20           April of 2015 --

21      A     Yes.

22      Q     -- regarding what the shooter wore.

23      A     Yes. On Page 346 he -- Michael -- Mikey stated that  
24           he doesn't know who had the gun. He initially states  
25           a guy with a white coat with stripes on the arms have



1 STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

2  
3 STATE OF WISCONSIN,

4 Plaintiff,

5 v.

6 CHONG LENG LEE,

7 Defendant.

Case No. 13-CF-1074

 **COPY**

8 MOTION HEARING

9  
10 BEFORE: HONORABLE GREGORY B. GILL, JR.  
11 Circuit Court Judge, Branch IV  
12 Outagamie County Justice Center  
13 Appleton, WI 54911

14 DATE: January 8, 2016

15 APPEARANCES: CARRIE SCHNEIDER  
16 District Attorney  
17 Appearing on behalf of the State

18 ALEX DUROS  
19 Assistant District Attorney  
20 Appearing on behalf of the State

21 DEBORAH VISHNY and EVAN WEITZ  
22 Attorneys at Law  
23 Appearing on behalf of the Defendant

24 CHONG LENG LEE  
25 Defendant  
Appearing in person

26 Joan Biese  
27 Official Reporter, Branch IV  
28 Outagamie County

**EX-B**

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I N D E X

WITNESS

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1 not every witness said the exact same thing, and  
2 different witnesses had different knowledge of the  
3 parties involved, so if he's going to make a claim  
4 that a witness told him something, I think that  
5 witness should be specifically identified by name and  
6 what that individual told Sergeant Thao, not just a  
7 general comment, they said this, they said that.

8 THE COURT: And if we can, let's -- we'll  
9 break it down by the individual witnesses.

10 ATTORNEY SCHNEIDER: Okay.

11 Q (BY ATTORNEY SCHNEIDER) So Ryan Thao, did he express  
12 having concern about getting information about  
13 Chong?

14 A Yes, he did. Very specific about concern for his  
15 safety, concern for his family, and how the people  
16 involved would be able to find him or retaliate with  
17 information he -- if he provided.

18 Q Did he mention having any information about Chong's  
19 background or his family background that was part of  
20 his belief?

21 A Not specifically names, but he's aware of the family  
22 and the brothers and the concern about their safety  
23 because of that.

24 Q Okay. And then at the time then do you remember if  
25 Mikey Thao expressed having concerns about sharing

1 information about Chong?

2 A Yes, to the point where I actually have to meet him  
3 outside his home so that we can at least have a good  
4 conversation between two of us.

5 Q Did he share anything specific about why he was  
6 afraid?

7 A Again, he -- he had more knowledge of Paul and his  
8 brothers and has some knowledge about some of the  
9 activity they were involved in in terms of violent  
10 incidents, beatings, fights.

11 Q And then finally Watou, did he have some specific  
12 concerns?

13 A I think just through his relationship with -- with  
14 Ryan and Mikey that he also expressed concern. I  
15 don't recall any specific in terms of that he's aware  
16 of Paul Lee or Chong or other brothers' activities,  
17 but he expressed concern about his safety, that these  
18 are dangerous people in that general term.

19 Q When these concerns were expressed to you, did they  
20 appear to be -- well, let me ask you this. When they  
21 expressed those concerns to you and they were talking  
22 about being aware of his family or his brother or the  
23 history, based upon your information and knowledge  
24 you knew at the time, were those legitimate  
25 concerns?

1     A     Yes.

2                   ATTORNEY VISHNY:  Objection.  I don't see  
3     what the relevance is.

4                   ATTORNEY SCHNEIDER:  Judge, part of the  
5     argument is that the -- she's arguing the officers  
6     are either disingenuous when they say these people  
7     had this significant fear and they made certain  
8     choices because of what was expressed to them about  
9     their fear, or that in some way, shape or form they  
10    acted in bad faith.  I think Sergeant Thao should be  
11    allowed to explain I believe this or I know this,  
12    when in his experience or his knowledge did he know  
13    or agree or was aware of those past instances with  
14    Chong's family.  It's going to his belief and his  
15    knowledge and the decisions that were made whether  
16    those fears they expressed were so significant or  
17    were legitimate.

18                  THE COURT:  I think, if I understood the  
19    question correctly, you're asking Sergeant Thao to  
20    surmise whether or not he was aware of the incidents  
21    which would legitimize the fear, and I think that  
22    causes him to go into the mindset of Mikey and Watou  
23    and Ryan, and so I think he could answer, based on  
24    what they told you, did they appear legitimate, but I  
25    don't think whether or not they actually took place,

1 I don't think we can go into.

2 ATTORNEY SCHNEIDER: Okay. Then I'll --

3 THE COURT: I'm going to sustain it as to  
4 how it's been phrased.

5 ATTORNEY SCHNEIDER: Okay.

6 Q (BY ATTORNEY SCHNEIDER) Could you see when the three  
7 of them were expressing their fears that they had an  
8 emotional reaction when they were talking about  
9 that?

10 A Yes, obviously.

11 Q Okay. So they -- I'm going to try to -- my question  
12 is going to be a little long, but I'm going to try to  
13 direct him a little bit.

14 So they express these fears and they say we're  
15 aware of the family history. Were you aware of a  
16 family history relating to violence or fighting in  
17 the Chong Lee family?

18 A Yes.

19 ATTORNEY VISHNY: Objection. Relevance.

20 ATTORNEY SCHNEIDER: That goes to whether  
21 or not he believed theirs fears and how he acted.  
22 You can have a lot of people say I'm afraid of Alex  
23 Duros because I think he's a bad person, and then you  
24 want to maybe take action about Alex or take action  
25 to protect that person, but when this officer, his

1 decisions in needing to protect those people or keep  
2 their names out of reports, and when that's based  
3 upon him telling them he was afraid and now you have  
4 to weigh whether they were acting in bad faith, and  
5 defense I think is trying to argue they've come up  
6 with this fear argument, it's disingenuous, I think  
7 what he knows about that family comes into his  
8 mindset when he decides do we really need to protect  
9 these people or is there an amount or a level of fear  
10 when he weighs what he should do.

11 ATTORNEY VISHNY: Judge, first of all, the  
12 prior testimony is that Sergeant Thao didn't make  
13 this decision on his own to destroy these reports,  
14 this was a collective decision that was made with the  
15 entire law enforcement team who discussed these  
16 particular witnesses and what to do. So I don't  
17 believe it's relevant for that reason.

18 Number two, let's say hypothetically speaking  
19 that Sergeant Thao is aware of some prior violent  
20 incidents, what justification does that give to  
21 destroy previous reports. There are remedies such as  
22 telling the prosecutor about the witnesses, telling  
23 the prosecutor about the fears, asking for reports to  
24 be redacted, asking for in camera inspections, asking  
25 for protective orders. I don't frankly see the

1           relevance to what the issues are that the court has  
2           to decide, which is were reports intentionally  
3           destroyed and what evidence did these reports  
4           contain. Those are the issues before the court, not  
5           whether or not Sergeant Thao is aware that these  
6           witnesses were afraid.

7                         THE COURT: Miss Schneider.

8                         ATTORNEY SCHNEIDER: There's a prong to  
9           that though that talks about did they act in bad  
10          faith, and so when the officers have previously  
11          talked about -- and if she wants me to call every CRU  
12          officer to come in and talk about their awareness of  
13          the Lee family and the brothers and all the other  
14          instances, I can, but I think Sergeant Thao is aware  
15          of all of those because of his length of time and his  
16          investigation in cases. When they say these people  
17          expressed fear to us and because of that we felt the  
18          need to protect them, when they talked about the  
19          Monfils, and I know Attorney Vishny thinks they're  
20          interpreting it wrong, but when they have to make  
21          that decision, I think if you have a witness say,  
22          well, I'm afraid of John because he's got a bad  
23          reputation, that officer knows nothing about it, he  
24          then has to make decisions, should I protect this  
25          person, you know, should I ask him more about their



1 fears because I think they're talking off the wall, I  
2 think that is relevant. It's relevant to why he did  
3 what he did, and it's relevant to the prong of did  
4 they act in bad faith.

5 ATTORNEY VISHNY: And again, bad faith  
6 doesn't mean that the fears were or were not  
7 legitimate. Bad faith is really the issues regarding  
8 what was the appropriateness of the actions taken by  
9 the police officers.

10 THE COURT: Yeah. I'm going to allow the  
11 officer to testify, and I think he has, unless,  
12 Attorney Schneider, you think I'm incorrect, as to  
13 whether or not he felt that Watou and Ryan and Mikey,  
14 whether their expressed fears appeared legitimate. I  
15 think the -- the knowledge of the officer I'm not  
16 entirely certain is germane. I'm going to sustain it  
17 on that point. Again, if you want to -- if you feel  
18 that the question that I am going to allow hasn't  
19 been answered, I'll allow that to be asked.

20 Q (BY ATTORNEY SCHNEIDER) So I think, Sergeant Thao,  
21 what I'm going to ask you at this point then is when  
22 they expressed these fears to you, did it appear to  
23 you that their fears were being expressed in a way  
24 where they weren't trying to make up something about  
25 their fears?

1 A No, they were real.

2 Q Did they talk about specifics, if you know?

3 A I don't recall specific incident they provided, but

4 for example, like Mikey and Ryan talk about how they

5 are familiar with the Lee's brother and things that

6 they have done in terms of some of the violent

7 situations, particularly Mikey had talked about how

8 he more familiar with Paul and his brothers and some

9 of the things that they have done. As you recall in

10 the second interview they talk about some of the

11 fights they involved in in some of the taverns in

12 downtown.

13 Q When they talked about those things, were those

14 things you were aware of?

15 A Yes. And I have obviously more knowledge in terms of

16 what the Lee brothers have done in regard to some

17 crimes that are committed in the past or beatings or

18 weapon related situation, investigation that I

19 personally involved in.

20 Q Okay.

21 ATTORNEY SCHNEIDER: Then I don't have any

22 other questions.

23 THE COURT: Attorney Vishny.

24 ATTORNEY VISHNY: Okay.

25 **EXAMINATION OF CHUE LEE THAO**

1     **BY ATTORNEY VISHNY:**

2     Q     First of all, as to Jack Thao, you were aware that  
3           Jack Thao was in a vehicle that was stopped with  
4           Mikey Thao and Watou Lee after being at Luna lounge,  
5           correct?

6     A     I was aware of that, I believe was sometime after we  
7           interviewed Ryan and Jack and Watou.

8     Q     No. You were aware -- I mean you became aware later  
9           after the interviews that they had been in the car  
10          stopped by you and another police officer?

11    A     I believe so, yes, I believe so.

12    Q     But you were aware before December -- before your  
13          contacts with Jack Thao and his parents about the  
14          store that Jack Thao had been in that car, right?

15    A     I -- I don't recall. I don't believe so because  
16          the -- the parents talked to me in January of 2014,  
17          and it was kind of by that time that there was no  
18          need to conduct additional interview with those  
19          three. And then Ryan names -- I mean Jack name came  
20          up but I don't recall what time frame that came up.

21    Q     Okay. And did you ever talk to Jack Thao  
22          specifically at the Appleton Asian Market on College  
23          Avenue? That's his parents' store?

24    A     It's on Wisconsin Avenue.

25    Q     Wisconsin. Excuse me. Did you ever talk

1 specifically with Jack Thao whether or not Jack Thao  
2 had heard rumors that Chong Lee was the alleged  
3 shooter in this case?

4 A No, I did not, not specific about this case. I might  
5 have stopped by to talk about the counterfeit and  
6 just to ask some questions about what his parents but  
7 not about Luna.

8 Q Did you not, during the course of whatever your  
9 purpose was, actually have a conversation with him  
10 where he told you he had heard rumors that Chong Lee  
11 was the shooter and didn't you have that conversation  
12 with him regardless of your purpose for going to the  
13 store?

14 A No.

15 Q Okay. And didn't you have a conversation with him at  
16 all about whether or not he knew Chong Lee?

17 A No.

18 Q Okay. All right. Turning away from the Jack Thao  
19 issue, I'm going to talk to you about Ryan, Mikey and  
20 Watou. What was the date that you interviewed these  
21 people?

22 A With Jack -- I mean with Ryan it would be sometime  
23 the afternoon, I believe it was on December 11th,  
24 2013.

25 THE COURT: And that was whom? I'm

1           sorry.

2                       THE WITNESS: That was Ryan Thao.

3                       THE COURT: Okay.

4   Q       (BY ATTORNEY VISHNY) Okay. So you think -- you said

5           which one was the afternoon of December 11th?

6   A       Ryan Thao.

7   Q       And what about Mikey?

8   A       Mikey was after we interview Paul Lee at Norka, so

9           something -- sometime around eleven p.m. to around

10          midnight.

11   Q       And what about Watou?

12   A       Watou I believe was about six p.m., between six and

13          seven p.m. on that same day, December 11, 2013.

14   Q       Now the suspect at the time of the shooting was Paul

15          Lee, right?

16   A       He was considered somewhat of a person of interest at

17          the time.

18   Q       Well he was more than a person of interest because at

19          the end of interrogating him at Norka, he was put

20          under arrest, wasn't he?

21   A       He was taken into custody.

22   Q       And he didn't have a hold for any other matter, he

23          was arrested for this particular homicide, right?

24   A       Yes, he was taken into custody.

25   Q       And when he was interrogating while at Norka it was

1           made quite clear to him that it was believed he was  
2           the person involved in this shooting, correct?

3    A    I did not believe -- at least I did not draw the  
4           conclusion myself personally, but I know the other  
5           officer that have investigated two or three days,  
6           four days prior to my involvement have shared some --  
7           some I guess conclusion or some assumption that he  
8           made because he was physically involved with Josh in  
9           terms of the fighting that he was potentially the  
10          suspect.

11   Q    Okay. Let's try to just stick to answering my  
12          question.

13   A    Sure.

14   Q    Trying to make the hearing short. You were there  
15          with Sergeant Rabas and you interrogated him,  
16          correct?

17   A    Yes.

18   Q    And it was that Paul Lee was the suspect, correct?  
19          It was stated explicitly, wasn't it?

20   A    Yes.

21   Q    And it was told to him explicitly, you had a gun in  
22          your hand when you were there, right?

23   A    Based on the photo that they observed.

24   Q    My question is was it told to him explicitly.

25   A    To Paul?

1 Q Yes.

2 A He was told he was a suspect in the shooting, yes.

3 Q Well he was told more than he was a suspect, he was  
4 told that they believed he was guilty, correct?

5 ATTORNEY VISHNY: Judge, you know what, I'm  
6 going to ask this hearing be adjourned. I have a lot  
7 of material that I could impeach Sergeant Thao with.  
8 I didn't expect him to be called as a witness today  
9 based on my conversation with Miss Schneider  
10 yesterday. I believed that Sergeant Rabas was going  
11 to be called potentially but that he was ill, wasn't  
12 going to be here. I could spend about a good two or  
13 three hours cross-examining Sergeant Thao and what he  
14 just said, so I suggest that we do one of two things,  
15 we either strike the entire record or we reset this  
16 for a day where I can come in with the impeachment  
17 materials.

18 This court has previously reviewed the  
19 transcripts of these interrogations. This court -- I  
20 mean, I have the reports that he has written. I  
21 don't think that these gentlemen were interviewed  
22 even on the 11th, I think it was the 10th. Pretty  
23 clear that Paul Lee was a suspect. So I'm not  
24 prepared to impeach him based on what's happened  
25 here. I can ask some other questions about this, but

1 in order to do a full impeachment, I simply can't  
2 prove it today.

3 ATTORNEY SCHNEIDER: I would dispute  
4 because I know we specifically talked yesterday  
5 about, and I told her Sergeant Thao had not talked to  
6 Jack Thao, there was this counterfeit grocery store  
7 thing with his parents.

8 ATTORNEY VISHNY: Correct.

9 ATTORNEY SCHNEIDER: So I don't know why  
10 she says she's surprised by Sergeant Thao's  
11 testimony.

12 THE COURT: I think now we're talking about  
13 Paul Lee.

14 ATTORNEY VISHNY: I'm not surprised about  
15 the testimony about Jack Thao at all. I wasn't  
16 surprised, it's exactly what I expected. But this  
17 other stuff about interviewing Ryan, Mikey, Watou,  
18 and, you know, I --

19 ATTORNEY SCHNEIDER: Well, it -- maybe I'll  
20 say this. My point of today was having him further  
21 express their fears and his basis and his knowledge.  
22 If we're going to argue over the dates and when they  
23 interviewed them and in what order, I want to -- I  
24 guess I'd object because her cross is beyond the  
25 scope. I don't know what she's trying to get to



1 through cross, but the purpose of why I recalled him  
2 on that was my thought that I needed to further  
3 express to the court his belief when it goes to the  
4 argument on bad faith.

5 ATTORNEY VISHNY: Let me try a few more  
6 questions, maybe I can handle this without the  
7 impeachment material.

8 Q (BY ATTORNEY VISHNY) Let's talk first about Ryan.  
9 We're going to talk about each one specifically.  
10 Okay?

11 A Yes.

12 Q Focusing on Ryan, what did Ryan tell you the shooter  
13 wore in that interview?

14 A He -- he did describe the person coming from which  
15 directions and a description of the clothing, and  
16 you're asking me to describe specifically what color  
17 in terms of -- I can't -- I don't have --

18 Q Because you don't remember, right?

19 A Correct.

20 Q And you can't refer to any notes because you've  
21 destroyed the reports?

22 A It was decided not to retain, yes.

23 Q And you didn't show him any photographs at the time  
24 at that interview, or did you?

25 A I don't recall showing photograph to him.

1 Q Paul Lee was a suspect at that time, the main suspect  
2 of the Appleton Police Department investigation,  
3 correct?

4 A I'm telling you in my mind --

5 Q I'm not asking about your mind, I'm asking about what  
6 the suspect was that the team was working to develop,  
7 it was Paul Lee, wasn't it?

8 A No. At the time it was not in my mind that Paul Lee  
9 was the suspect.

10 Q It was in your mind that somebody else was?

11 A No. It's an open investigation to determine who have  
12 done the shooting.

13 Q When Ryan Lee told you he was afraid of people in the  
14 Lee family, he didn't even mention Chong Lee's name  
15 during that interview on December 10th or 11th,  
16 whichever day it occurred, he didn't even mention  
17 Chong Lee's name to you.

18 A Right. His name is Ryan Thao. He did not.

19 Q Excuse me. He did not mention Chong Lee, we're  
20 absolutely clear about that, correct?

21 A No, he did not mention.

22 Q The person he mentioned being afraid of was Paul  
23 Lee?

24 A I don't recall he mentioned Paul Lee, but he  
25 expressed concern about the brothers, the family,

1           because he's familiar with them.

2     Q     He told you he knew Paul Lee, right? That's who he

3           was familiar with, right?

4     A     I recall -- believe that, but the person that we

5           actually have a better relationship or knowledge or

6           interaction was Mikey Thao, that he --

7     Q     I'm asking you about Ryan. We're sticking to Ryan.

8           Okay?

9     A     I don't recall him saying Paul Lee that he knew, I

10          don't recall that.

11    Q     Okay. So if he talked about the Lee brothers,

12          though, we are 100 percent positive the name Chong

13          Lee never came up, correct?

14    A     From Ryan Thao, no.

15    Q     No. And he didn't even know Chong Lee, you found out

16          later when you reinterviewed him, right?

17    A     Correct.

18    Q     So now that we established the name Chong Lee was in

19          no way involved in the Ryan Thao discussion, let's

20          talk about Mikey Thao. Mikey Thao also did not

21          mention Chong Lee as somebody he was specifically

22          afraid of, correct?

23    A     Not names but just association with brothers.

24    Q     Did he name specifically any specific brothers?

25    A     That he's aware of all of them.

1 Q Did he name names?

2 A I didn't -- I don't recall exactly names, but he

3 mentioned that he's familiar with Paul Lee.

4 Q Okay. Did he tell you what his description of the

5 shooter's clothing was?

6 A Yeah, he did provide a description.

7 Q What did he tell you it was at the time?

8 A Again, I don't recall, but it was more of a jacket

9 and some type of two-tone color or different color,

10 and I can't give you precisely the color that he

11 described.

12 Q And of course you can't remember because you didn't

13 write it down.

14 A It was decided not to retain, yes.

15 Q And you didn't retain the tapes, right?

16 A Right.

17 Q And clearly this was the most important thing of this

18 investigation was to get a description of who did the

19 shooting when you're talking to these witnesses a few

20 days before it -- after it occurred, excuse me.

21 A Taking into consideration the express for their

22 safety, we decided not to retain the tape.

23 Q I didn't ask you that. What I asked you was, clearly

24 the focus of the investigation, whether it's two,

25 three, four days after this shooting, is to find out

1           who did it, right?

2     A     Correct.

3     Q     A description would be a crucial thing to find out,

4           correct?

5     A     Correct.

6     Q     Clothing would be a crucial thing, right?

7     A     Yes.

8     Q     Height and weight would be a crucial thing, right?

9     A     Correct.

10    Q     Showing photos could be a crucial thing, correct?

11    A     Yes.

12    Q     And you didn't show him any photographs either during

13           that?

14    A     I don't recall showing photo.

15    Q     Okay. And he didn't specifically ever mention Chong

16           Lee as somebody he was afraid of?

17    A     Again, I did not give names other than have been

18           expressed concern, so the answer to your question

19           would be no.

20    Q     All right. Watou Lee. He didn't know Chong Lee

21           either, right?

22    A     No, he did not.

23    Q     Chong Lee's name never came up in the interview,

24           correct?

25    A     Yes.

1 Q Did you ask him for a description of what the shooter  
2 wore?  
3 A Yes.  
4 Q Height and weight?  
5 A Yes.  
6 Q You destroyed the tapes, right?  
7 A Correct.  
8 Q You knew at the time what other witnesses had told  
9 the police in terms of descriptions of the shooter,  
10 right?  
11 A Yes.  
12 Q In fact one of the most crucial witnesses was Daniel  
13 Kersten who was the bouncer. You weren't aware of  
14 any of his statements?  
15 A No.  
16 Q Or any of the other witness statements as to what the  
17 shooter wore?  
18 A No.  
19 Q You were just aware that the police believed that  
20 Paul Lee had a gun in his hand as he was fleeing  
21 Luna?  
22 A It was expressed to me in that fashion, that he may  
23 have something in his hand similar to a gun.  
24 Q And when Watou Lee said he was afraid of people in  
25 the Lee family, did he specifically mention Paul

1           Lee's name?

2    A    Watou, he did not know the brothers.

3    Q    Then how could he have said he was afraid of the Lee

4           brothers if he didn't know them?

5    A    Just through his socialization with Mikey Thao and

6           with Ryan Thao and the fact that he's aware of the

7           gang or the association with friends in that group.

8    Q    Now, you said that you're aware of prior violent acts

9           by what I characterize as the Lee brothers, correct?

10   A    Yes.

11   Q    Actually, the prior violent acts you were aware of

12           were those of Paul Lee.

13   A    No, his other brothers too.

14   Q    But it wasn't Chong Lee.

15   A    Not -- he was a victim of a shooting.

16   Q    Chong, yes, well, being a victim is not considered to

17           be a violent act by the Appleton Police Department,

18           is it?

19   A    Depending on what circumstance that caused it, but to

20           answer your question, I would say no.

21   Q    Okay. So aside from Chong Lee being a victim, you

22           weren't aware of him being involved in any other

23           incidents that were violent that you're describing

24           when you say that you were certainly aware these were

25           legitimate concerns, correct?

1 A Not specifically with him.  
2 Q But with Paul Lee you were aware of those, right?  
3 A Yes.  
4 Q And you were aware of that Paul Lee had been involved  
5 in a prior shooting, correct?  
6 A Yes.  
7 Q And you had personally been involved in investigating  
8 it, right?  
9 A Yes.  
10 Q And he was never charged with it, right, or was he?  
11 A He was referred to the DA, and there's some issue  
12 with communication between the office.  
13 Q In other words, the charges weren't issued,  
14 regardless of the reason?  
15 A At the end of the day, yes.  
16 Q Okay. And any other violent incidents you're talking  
17 about would either be Paul Lee, Hu Lee, Teng Lee,  
18 other -- other brothers, but not Chong Lee, correct?  
19 A Not specifically him, yes.  
20 Q Okay. All right.

21 ATTORNEY VISHNY: Nothing further.

22 THE COURT: Attorney Schneider.

23 ATTORNEY SCHNEIDER: Just briefly.

24 EXAMINATION OF CHUE LEE THAO

25 BY ATTORNEY SCHNEIDER:



1 Q Ryan, Watou and Mikey all described the location the  
2 shooter came from, correct?

3 A Of course.

4 ATTORNEY VISHNY: Objection. Relevancy.  
5 This has already been discussed.

6 ATTORNEY SCHNEIDER: Something she asked  
7 about, did they provide descriptions of A, B, C or D,  
8 so that wasn't asked, that's why I'm asking it.

9 THE COURT: I'll allow it. Go ahead.

10 A Yes. All three provided directions or the location  
11 where the shooter have come from.

12 Q Other than Chong and Paul Lee, because defense asked  
13 about it, when there was at least expressed about  
14 concerns about the family, are you aware or were you  
15 involved in investigations relating to the other  
16 brothers that were violent where they were --

17 (Brief recess.)

18 Q I think I asked you if you were aware of other  
19 offenses where the Lee brothers were committing  
20 offenses that you would consider to be violent.

21 A Yes..

22 Q Other offenses that involved firearms.

23 A Yes.

24 ATTORNEY SCHNEIDER: I have nothing further  
25 then.

1 ATTORNEY VISHNY: Just very quickly.

2 EXAMINATION OF CHUE LEE THAO

3 BY ATTORNEY VISHNY:

4 Q When you interviewed these three individuals, Ryan,  
5 Mikey and Watou, the first time, did you have them  
6 draw maps of where the shooter came from?

7 A Yes.

8 Q And so those were destroyed too?

9 A Yes.

10 ATTORNEY VISHNY: Nothing further.

11 ATTORNEY SCHNEIDER: I don't have any  
12 additional follow up, Judge.

13 THE COURT: All right. I don't have any  
14 questions for you, sir.

15 Any additional witnesses?

16 ATTORNEY SCHNEIDER: No.

17 ATTORNEY VISHNY: You don't want to put in  
18 anything about the fact that this jump drive is  
19 missing?

20 ATTORNEY SCHNEIDER: I just -- there's just  
21 a couple other discovery issues we're dealing with,  
22 I'm providing some reports, and so I think we'll just  
23 file by stipulation, because I'll make sure she  
24 doesn't have an objection to what I file, and we'll  
25 do that next week.

1 STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

2  
3 STATE OF WISCONSIN,

4 Plaintiff,

5 v.

Case No. 13-CF-1074

6 CHONG LENG LEE,

7 Defendant.

 COPY

8  
9 DECISION

10 BEFORE: HONORABLE GREGORY B. GILL, JR.  
11 Circuit Court Judge, Branch IV  
12 Outagamie County Justice Center  
13 Appleton, WI 54911

14 DATE: February 3, 2016

15 APPEARANCES: CARRIE SCHNEIDER  
16 District Attorney  
17 Appearing telephonically on behalf of the  
18 State

19 ANDREW MAIER and ALEXANDER DUROS  
20 Assistant District Attorneys  
21 Appearing on behalf of the State

22 EVAN WEITZ  
23 Attorney at Law  
24 Appearing on behalf of the Defendant

25 CHONG LENG LEE  
Defendant  
Appearing in person

Joan Biese  
Official Reporter, Branch IV  
Outagamie County

EX-D

1 of the prosecution, I do not find the conduct to rise  
2 to the level warranting dismissal of this action.  
3 Accordingly, the request to dismiss is denied.

4 With that, the court now turns to the second  
5 issue before it, and that is the destruction of  
6 evidence, and, in particular, the destruction of  
7 three interviews and related materials from  
8 individuals who are at the scene of the incident.

9 Now, recently, the Supreme Court in *State v.*  
10 *Luedtke* addressed the issue of destruction of  
11 exculpatory evidence. 362 Wis.2d 1, 2015. And  
12 again, that is *State v. Luedtke*. Therein the court  
13 determined that in order for a moving party to  
14 succeed on a destruction of evidence motion, the  
15 party must show, number one, the State failed to  
16 preserve evidence that was apparently exculpatory or,  
17 two, acted in bad faith by prevailing -- or by  
18 failing to preserve evidence that was potentially  
19 exculpatory.

20 Now, as noted by the State in its brief,  
21 apparently exculpatory evidence is that of the type  
22 of evidence that possesses an exculpatory value that  
23 was apparent to those who had custody of the evidence  
24 before the evidence was destroyed, and, two, the  
25 evidence is of such a nature that the defendant is

1       unable to obtain comparable evidence by other  
2       reasonable available means. *State v. Munford*, 330  
3       Wis.2d 575, a 2010 Court of Appeals case.

4               Now, potentially exculpatory evidence conversely  
5       is that type of evidence which has the potential to  
6       be exculpatory or useful but does not provide the  
7       direct link associated with apparently exculpatory  
8       evidence. In this case, the court, after reviewing  
9       the briefs of the parties and the summaries provided  
10      primarily by the defense, concludes that the  
11      statements at issue are of the latter category,  
12      namely, that of potentially exculpatory evidence.

13             That being the case, the court turns to the next  
14      analysis, namely, was the destruction of evidence  
15      done with bad faith. Now, conduct is considered bad  
16      faith if the State was, number one, aware of the  
17      potentially exculpatory value or usefulness of the  
18      evidence and the State failed to preserve, and, two,  
19      acted with official animus or made a conscious effort  
20      to suppress exculpatory evidence. Again, the *Luedtke*  
21      case provides us with that authority.

22             In this case the court concludes that there is a  
23      sufficient indicia to suggest that bad faith as  
24      defined here was present. First of all we look at  
25      the nature of the evidence. Now, the court concludes

1       that the police were aware of the nature of the  
2       evidence. The court reaches this conclusion based  
3       upon the following: Number one, the court (sic) felt  
4       it appropriate to initially interview the three  
5       individuals as potential witnesses; number two, the  
6       recordings of those individuals were maintained for  
7       many months before destruction; number three, even  
8       after the destruction of evidence, the images and  
9       names of the three remained on the white board, a  
10      board which the court understands is used to track  
11      the investigation. There, the inclusion on the  
12      board, begets the question, if not potentially  
13      exculpatory, why remain on the white board. Once the  
14      three were disclosed to opposing counsel, those three  
15      individuals were reinterviewed, thus bringing to  
16      question why reinterview if not potentially  
17      exculpatory.

18           Next, at some point the police made an effort to  
19      notify the DA of the destruction of the evidence.  
20      With respect to the decision to eliminate the  
21      records, the court notes that the *Luedtke* case does  
22      not mandate that the suppression be of actual  
23      exculpatory evidence. As such, the court concludes  
24      that this element also allows for the consideration  
25      of potentially exculpatory evidence. Here the court

1 concludes there was suppression. It appears that the  
2 decision to destroy was made with some forethought.  
3 Two, while the choice to destroy the records may have  
4 been purely motivated, i.e. to protect the witnesses,  
5 the result is the intentional suppression of  
6 interviews. Three, based upon this court's review of  
7 policies pertaining to the retention of interviews,  
8 the destruction, while perhaps not in violation of a  
9 direct policy, was certainly an unusual practice and  
10 inconsistent with the spirit of interview retention  
11 policies maintained by the Appleton Police  
12 Department.

13 While the court recognizes it is imputing the  
14 conduct of the police to the District Attorney's  
15 office, and by all accounts the court finds the  
16 District Attorney's office played no role in the  
17 decision to delete the evidence, courts have held  
18 that it is appropriate to attribute this conduct to  
19 the State when there is a strong relationship between  
20 the two agencies. In *Jones v. State* the court,  
21 addressing a distinct discovery issue from that in  
22 this case, concluded that the prosecuting attorney's  
23 obligations under the section extended to material  
24 and information in the possession or control of  
25 members of his staff and of any others who have

1 participated in the investigation or evaluation of  
2 the case and who either regularly report or, with  
3 reference to this particular case, have reported to  
4 the office. Again, *Jones v. State*, 69 Wis.2d 337, a  
5 1975 case. The court sees no reason why the same  
6 logic should not exist here where the police was  
7 working closely with the District Attorney's office  
8 in pursuit of this matter.

9 As such, and in light of the foregoing, the  
10 court concludes that action is warranted. While  
11 dismissal is an option, the court finds it  
12 unreasonable in light of the facts and circumstances  
13 associated with this case. That said, the  
14 alternative remedy of suppression is appropriate. As  
15 such, the court (sic) shall be prohibited from  
16 calling Ryan Thao, Mikey Thao and Watou Lee. That  
17 said, should the police or, rather, should the  
18 defense inquire into the police conduct of the  
19 destruction of the tapes, it may present cause to  
20 have the issue revisited.

21 The court should mention that it is not meant to  
22 suggest that the court is of the opinion that the  
23 police department engaged in intentional destruction  
24 of evidence in an effort to usurp the defendant's  
25 right to a fair trial. That said, the court does



1 STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

2  
3 STATE OF WISCONSIN,

4 Plaintiff,  
5 v.

Case No. 13-CF-1074

6 CHONG LENG LEE,

7 Defendant.

 **COPY**

8 JURY TRIAL - DAY THREE

9  
10 BEFORE: HONORABLE GREGORY B. GILL, JR.  
11 Circuit Court Judge, Branch IV  
12 Outagamie County Justice Center  
13 Appleton, WI 54911

14 DATE: February 26, 2016

15 APPEARANCES: CARRIE SCHNEIDER  
16 District Attorney  
17 Appearing on behalf of the State

18 ANDREW MAIER and ALEXANDER DUROS  
19 Assistant District Attorneys  
20 Appearing on behalf of the State

21 DEBORAH VISHNY and EVAN WEITZ  
22 Attorneys at Law  
23 Appearing on behalf of the Defendant

24 CHONG LENG LEE  
25 Defendant  
Appearing in person

26 Joan Biese  
27 Official Reporter, Branch IV  
28 Outagamie County

**EX-D**

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1 Q How would you describe the detectives that talked to  
2 you?  
3 A Aggressive.  
4 Q Are they black, white, Asian?  
5 A They're white.  
6 Q Male, female?  
7 A Both males.  
8 Q Both males. What do you recall about them  
9 physically, can you describe them?  
10 A They were tall. One had slicked back hair and the  
11 other one had darker hair. That's all I remember.  
12 Q Do you recall what they were wearing?  
13 A No, I don't. I don't remember.  
14 Q Okay. Nothing -- they weren't in -- they were not in  
15 blue police uniforms though, right?  
16 A No.  
17 Q Like --  
18 A They were dressed up like --  
19 Q -- suits and ties?  
20 A Yeah. Suits and tie.  
21 Q And you know -- did you know when you were talking  
22 with them you were being recorded?  
23 A No, I did not know.  
24 Q Okay. And you know that they prepared reports after  
25 they spoke with you, right?

1     A     Yup.

2     Q     You've had a chance to look at that report?

3     A     No, they didn't show me.

4     Q     So you didn't indicate to the detectives that Chong

5           said, I got him, I shot him?

6     A     I didn't say he shot him. I remember that he said he

7           just got him. He didn't say he shot him.

8     Q     Chong said I got him?

9     A     Yup. He just said he got him.

10    Q     When he said that, what -- what was the -- was that

11           in your room?

12    A     I believe so, yeah.

13    Q     And it's during the course of this conversation that

14           he starts with you about a shooting that happens at

15           Luna in Appleton?

16    A     Pretty much after.

17    Q     Like it's during the time that Joe is asleep in your

18           room and he comes in --

19    A     Yeah.

20    Q     -- right? This isn't something you're real

21           comfortable talking about, is it?

22    A     Oh, I --

23                         ATTORNEY VISHNY: Judge, I'm going to

24           object to leading questions at this point.

25                         THE COURT: Mr. Maier, if you could please

1 rephrase the question.

2 ATTORNEY MAIER: I guess I'd ask to be able  
3 to impeach him given I think the statement that he  
4 gave and some reluctance that we've had today.

5 ATTORNEY VISHNY: I would like to approach  
6 the bench.

7 (Bench conference.)

8 ATTORNEY MAIER: Mr. Moua, thank you, I  
9 don't have any further questions.

10 THE COURT: Who from the defense is  
11 handling questions?

12 ATTORNEY VISHNY: I will.

13 THE COURT: Attorney Vishny.

14 **EXAMINATION OF PETER MOUA**

15 **BY ATTORNEY VISHNY:**

16 Q Mr. Moua, is Joe Thor related to you at all?

17 A I'd say like distant cousin.

18 Q Okay. You kind of call each other cousins  
19 sometimes?

20 A Yes.

21 Q Even though he's not like a first cousin?

22 A No, he's not.

23 Q And you said that you met Chong Lee through Joe Thor,  
24 right?

25 A Yup.

1 Q So you've known Joe longer?

2 A Yup.

3 Q And he's more of a closer friend of yours?

4 A Yup.

5 Q Somebody you communicate with more?

6 A Correct, yup.

7 Q All right. And somebody who where Chong is more of a

8 casual acquaintance?

9 A Yup.

10 Q Not somebody you know as well?

11 A Yup.

12 Q And certainly your kind of level -- personal

13 conversations are a lot greater with Joe Thor than

14 with Chong Lee.

15 A Yup.

16 Q Now, when the police -- I'm going to ask you some

17 questions now about when the police came to talk to

18 you.

19 A All right.

20 Q You said they were aggressive when they came?

21 A Yup.

22 Q Can you explain to the jury what you mean by

23 aggressive?

24 A Well, they asked me what I was majoring in, and they

25 said that they could like ruin my career if I don't

1           give them any information.

2     Q     Okay.

3     A     So that's about it.

4     Q     Now, can you elaborate on that a little bit, what

5           they meant when they said they could ruin your

6           career?

7     A     I told him I was going to radiology.

8     Q     I'm sorry. I can't hear you.

9     A     I told him I was majoring in radiology, and they said

10          they have connections to radiology that can mess me

11          up. And I just said okay. That's about it.

12    Q     Did they say that to you more than once?

13    A     I'd say they only said it once.

14    Q     All right.

15    A     Yeah.

16    Q     How did you feel when they said that?

17    A     Well, it's my career that I want to go to so I kind

18          of felt, like, helpless maybe.

19    Q     All right. And so what you remember actually telling

20          them after they said they were, you know, they could

21          threaten your career was that Chong Lee said I got

22          him?

23    A     Yeah.

24    Q     You don't remember saying I shot him, that Chong Lee

25          said that?

1     A     Yeah.

2     Q     Just that he said I got him?

3     A     Yup.

4     Q     That's your memory?

5     A     Yup.

6     Q     And you were pretty scared, and at that point, after

7           being threatened by the police, you wanted to tell

8           them what you knew, right?

9     A     Yup.

10    Q     Because you absolutely didn't want them trying to do

11           anything to ruin your career?

12    A     That's -- yup.

13    Q     And is it fair to say that that's a threat you took

14           seriously?

15    A     Yeah. That's serious because it's what I want to go

16           for.

17    Q     And did you go for it?

18    A     I'm still pursuing it so --

19    Q     But you've gotten your four-year bachelor degree?

20    A     Not yet.

21    Q     I thought you said you got your degree. I

22           misunderstood.

23    A     No.

24    Q     But you're in college?

25    A     Yup. I'm still in college.



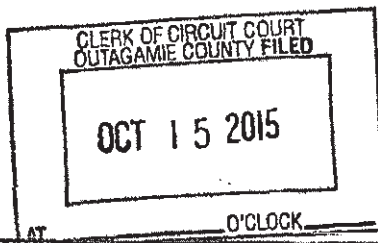
STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY  
BRANCH IV

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State of Wisconsin,

-VS-

Chong Leng Lee



CASE NUMBER #13 CF 1074

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ORDER

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Before the Court is a motion of the Prosecution seeking to introduce certain statements of the Defendant. In particular, the Prosecution seeks permission to utilize various statements of the Defendant involving the phrase "beat the case". For the reasons stated herein, the motion of the Prosecution will be denied.

Wisconsin Statute Section § 904.01 defines "relevant evidence" as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. In this case, the Prosecution is offering the statements in question primarily to support its claim of intimidation of a victim. To sustain a claim of intimidation of a victim, a moving party must be able to establish that a Defendant "knowingly and maliciously prevents or dissuades, or who attempts to so prevent or dissuade any witness from attending

EX-E

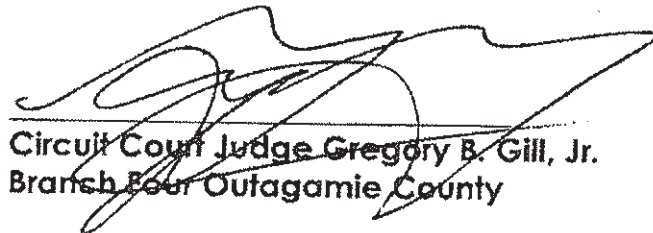
or giving testimony at any trial, proceeding or inquiry authorized by law." Wis. Stat. § 940.42 .

In this case, if the uses of the term "beat this case" and other like statements were recorded during jail conversations and letters made by the Defendant to other individuals. The Court fails to see how the statements made to individuals other than to the victims in the intimidation charges, or with instructions related to the victims are relevant.

Similarly, the statements in and of themselves appear subject to various meanings. Given the context, it is equally plausible that the comments are innocent or nefarious. For this reason too, the comments are excludable. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Wis. Stat. § 904.03 (West). This case standing alone is complex with many moving parts and witnesses. It is the opinion of the Court that were these statements be allowed it would only add confusion to the matters at hand.

IT IS ORDERED.

Dated this 14<sup>th</sup>, day of October, 2015.



Circuit Court Judge Gregory B. Gill, Jr.  
Branch Four Outagamie County

cc Carrie Schneider  
Deborah Vishny  
Evan Weitz

1 STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

2

3 STATE OF WISCONSIN,

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Plaintiff,

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Case No. 13-CF-1074

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CHONG LENG LEE,

7

Defendant.

8

POST-CONVICTION MOTION HEARING

9

BEFORE:

10

HONORABLE GREGORY B. GILL, JR.  
Circuit Court Judge, Branch IV  
Outagamie County Justice Center  
Appleton, WI 54911

11

12

DATE:

February 26, 2018

13

14

APPEARANCES:

MELINDA TEMPELIS  
District Attorney  
Appearing on behalf of the State

15

16

ALEX DUROS  
Assistant District Attorney  
Appearing on behalf of the State

17

18

ANA BABCOCK  
Attorney at Law  
Appearing on behalf of the Defendant

19

20

CHONG LENG LEE  
Defendant  
Appearing in person

21

22

23

24

Joan Biese  
Official Reporter, Branch IV  
Outagamie County

25

EX-G

1 to, but if you want to review the few pages before it  
2 to get some context and let me know.  
3 A Is this the direct or the cross?  
4 Q That is the direct?  
5 A Okay. Let me just take a look. I'm finished  
6 reviewing it.  
7 Q Do you recall what came in through that Exhibit 92?  
8 A I don't have any independent recollection. I have to  
9 rely on the transcript.  
10 Q Do you have any -- I guess I would start with, there  
11 was no objection made to that testimony or that  
12 exhibit, correct?  
13 A Apparently not.  
14 Q Do you have any recollection as to why or why not an  
15 objection was made, if you can speak to that?  
16 A No, I don't.  
17 Q Now, I want to move to the last day of trial, just  
18 sort of the specifics and dynamics of what was  
19 happening. So the final day of trial, do you recall  
20 that there were jury instructions, closing -- closing  
21 arguments, but there was no evidence presented that  
22 day?  
23 A If that's what the record shows, that's what it  
24 shows. I -- that would make sense in light of the  
25 length of the trial.

1 Q There's a little uncertainty in the transcripts in  
2 terms of how things happened. I -- I'll have you  
3 read Day 11 of the transcripts, but it appears that  
4 once the jury was sent to deliberations, that court  
5 reporter was sent home, and then once the verdict was  
6 received, a new court reporter came in. Is that what  
7 happened, do you recall?

8 A That rings a bell, but I don't really remember that  
9 very well.

10 Q I will show you Day 11 of the jury trial, the  
11 transcript for that hearing. March 9th, 2016. If  
12 you want to go to Page 185, and then if you just want  
13 to review the couple of pages after that, you'll also  
14 see the start of a second transcript for that same  
15 day by a different court reporter, and let me know  
16 when you're finished.

17 A Okay. The transcript shows that a different reporter  
18 came on. That's highlighted on Page 188.

19 Q And so is it fair to say that from the time that the  
20 jury was sent out to deliberate to the time a verdict  
21 was rendered, there was no court reporter recording  
22 proceedings? Do you recall any of that?

23 A I don't have an independent recollection, but it  
24 seems that there was a separate court reporter so I'm  
25 assuming if there were things that happened that it

1           would be on the record with the second reporter. I  
2           don't have any memory of who was sitting in the  
3           courtroom.

4     Q     But after the jury was sent out to begin  
5           deliberations to the time a verdict was received,  
6           there were issues that came up, questions from the  
7           jury, that sort of thing, do you recall that?

8     A     Yeah. I think we did have to come back, if I  
9           remember correctly.

10    Q     And do you know whether those discussions were  
11           handled in the courtroom or in chambers?

12    A     I have no memory one way or the other.

13    Q     Do you recall if there was a court reporter present  
14           in the courtroom?

15    A     I have no recall one way or the other.

16    Q     Do you have a recollection of any of the specific  
17           questions from the jury?

18    A     No.

19                   THE COURT: I think, Counsel, if it helps,  
20           as a matter of practice, if I'm not mistaken, all  
21           questions that would be asked by jurors would be  
22           marked as an exhibit and then they would be made a  
23           part of the record.

24                   ATTORNEY BABCOCK: But not -- there would  
25           be no court reporter transcript describing the

1 discussions relative to those jury questions?

2 THE COURT: I don't -- I don't know the  
3 specifics -- I mean I don't have an independent  
4 recollection. I know that questions that would be  
5 asked, whether it's during a trial or afterwards, I  
6 would mark those as exhibits.

7 ATTORNEY BABCOCK: And, Judge, that's  
8 what -- I'm really trying to get clarification from  
9 my perspective. I do have the questions marked, but  
10 the actual discussion in terms of what would go to  
11 the jury didn't appear in any of the transcripts, so  
12 I'm just trying to see if Attorney Vishny knows  
13 whether there was a third court reporter brought in  
14 or --

15 A I really have no memory at all about what happened.  
16 I -- I do remember that we had to come back to the  
17 court. I don't even remember if we were waiting here  
18 or we walked to our hotel and walked back to the  
19 courthouse. But I do know that there were reasons to  
20 have discussions that were before the verdict  
21 occurred. That I remember. And I can't tell you  
22 anything else about it.

23 Q Attorney Vishny, I am showing you what was marked as  
24 Trial Exhibit 207, it was received by the court on  
25 March 9th, 2016. A note from the jury. If you could



1           just review that and let me know when you're  
2           finished.

3    A    All the pages --

4    Q    Yes.

5    A    -- you want me to look at?

6    Q    Yes, please.

7    A    Okay. I'm finished.

8    Q    Do you recall that question coming from the jury?

9    A    I don't have an independent recollection. I'm  
10       relying on the exhibit.

11   Q    And if you can turn to page -- the third page of the  
12       letter that's attached to that exhibit?

13   A    Yes.

14   Q    I guess I should just back up. This -- the documents  
15       attached to 207, were those the items that went to  
16       the jury in response to their question?

17   A    I assume so based on you handing me Exhibit 207. I  
18       wasn't there when the documents were delivered to the  
19       jury.

20   Q    Do you recall whether there was discussions in terms  
21       of what documents would go to the jury on that  
22       particular issue?

23   A    I don't have an independent recollection. I'm sorry.

24   Q    And again, on Page 3 of the letter that's attached to  
25       that, do you see the reference to I'll beat this case